IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 924 of 2007
With
CIVIL APPLICATION No. 2635 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
ASGARALISA HAJI SAIBABA SAIYED & 4 - Defendant(s)

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Appearance :
MR SUNIL B PARIKH for Appellant(s) : 1,
MR KIRTIDEV R DAVE for Defendant(s) : 1 - 2.
None for Defendant(s) : 3 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/03/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

The appeal is admitted. Mr KR Dave, learned advocate with Mr RK Dave waives service of notice of admission of the appeal. With the consent of the learned advocates for the parties, we have taken up the appeal for final disposal today.

2. This appeal at the instance of the Insurance Company challenges the judgment and award dated 25.8.2006 passed by the Motor Accident Claims Tribunal, Kutch at Bhuj in MAC Petition No.259 of 2005 awarding compensation of Rs.4,36,500/- with proportionate costs and interest at the rate of 10% per annum to the parents of Mohammad Hanifsha, who died at the age of about 20 years, in a motor vehicle accident which took place on 16.5.2005.

3. Since the claim petition was filed under Section 163A of the Motor Vehicles Act, 1988, the only challenge canvassed by the learned counsel for the appellant-Insurance Company is that the Tribunal, after assessing the monthly income of the deceased at Rs.4,000/- per month and deducting one-third therefrom as the personal expenses of the deceased and consequently assessing the dependency benefit of Rs.2,000/- per month i.e. Rs.24,000/- per annum, erred in adopting the multiplier of 18 years merely because the deceased was in the age-group of 20 to 25. On that basis, the compensation for loss of dependency benefit was worked out at Rs.4,32,000/- and adding thereto the conventional amounts, the award was passed by the Tribunal for total

compensation of Rs.4,36,500/-.

4. Since the claim petition was filed under Section 163A of the Act, the learned counsel for the appellant-Insurance Company has only challenged the adoption of multiplier of 18 years. It is submitted that, as held by the Apex Court, while adopting the multiplier even under Section 163A of the Act, when the only claimants are parents of the deceased, the Tribunal is required to take into consideration the age of the parents, vide Maharashtra State Road Transport Corporation vs. Lalnipuii, **2007 ACJ 561**.

5. We find considerable substance in the submission of the learned counsel for the appellant-Insurance Company. As per the settled legal position, even under Section 163A of the Act, while adopting the multiplier, when the only claimants are parents, the Tribunal is required to take into consideration not the age of the deceased but the age of the claimants.

6. Applying the above ratio, we have to consider the age of the claimants. The father of the deceased was aged 48 years on the date of the accident and the mother was aged 45 years on the date of the accident. Hence taking into consideration the age of the mother who would have got the dependency benefit of the deceased for a longer period, the multiplier of 15 will have to be adopted and that is the multiplier for the age-group of 40 to 45 years.

Accordingly, the compensation for dependency benefit works out to Rs.24,000 X 15 = Rs.3,60,000/-. Adding thereto, Rs.2500/- for loss to the estate and Rs.2000/- for funeral expenses, the total compensation comes to Rs.3,64,500/-.

7. As far as the rate of interest is concerned, though the learned counsel for the appellant-Insurance Company did challenge the same, in our view, in the facts and circumstances of the case, the discretion exercised by the Tribunal in determining the rate of interest under Section 171 of the Act does not call for any interference.

8. In the result, the appeal is partly allowed. The award passed by the Motor Accident Claims Tribunal is modified by reducing the amount of compensation from Rs.4,36,500/- to Rs.3,64,500/- with proportionate costs and interest at the rate of 10% per annum from the date of the claim petition till the date of deposit.

Mr Parikh for the appellant-Insurance Company states that the appellant has already deposited the undisputed amount of compensation with proportionate costs and interest with the Tribunal.

Hence, the appellant-Insurance Company shall deposit the deficit amount with proportionate costs and interest by 30th March 2007.

9. The amount deposited before this Court at the time of filing the appeal shall be transmitted to the Tribunal within the above time-limit.

10. Considering the fact that 40% of the undisputed amount already deposited by the appellant-Insurance Company has been disbursed to the claimants, the balance amount which is going to be deposited by the appellant-Insurance Company hereafter, and the amount to be transmitted from this Court, shall be invested in fixed deposits with a nationalized bank near the residence of the claimants for a period of three years, with the usual conditions about prohibition against premature encashment of/ encumbrance over the deposits, with permission to the claimants to withdraw the interest periodically accruing on such fixed deposits and with a direction to the Bank that the bank account of the claimants shall not be permitted to be operated by any power of attorney holder who is not a close relative of the claimants.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

zgs/-